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Arizona Corporation Commission

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AZ CORP COMMISSION  
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Attorneys for Pine Water Company, Inc.

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**BEFORE THE ARIZONA CORPORATION COMMISSION**

IN THE MATTER OF THE  
APPLICATION OF PINE WATER  
COMPANY FOR A  
DETERMINATION OF THE  
CURRENT FAIR VALUE OF ITS  
UTILITY PLANT AND PROPERTY, A  
RATE INCREASE AND FOR  
APPROVAL TO INCUR LONG-TERM  
DEBT.

DOCKET NO: W-03512A-03-0279

**PINE WATER COMPANY'S RESPONSE  
TO OBJECTION TO SECOND DATA  
REQUEST OF PINE WATER COMPANY  
SERVED UPON PINE/ STRAWBERRY  
WATER IMPROVEMENT DISTRICT**

Applicant Pine Water Company hereby responds to the District's objection to the Company's second set of data requests. In sum, the District offers three reasons for its objection, each of which is without merit. Therefore, the District's objection should be overruled.

First, the requested information is relevant and calculated to lead to the discovery of admissible evidence in this proceeding. The District has challenged Pine Water's requested recovery of rate case expense in this proceeding. For example, District witness Harry Jones' testifies that "the District highly objects to the level of rate case expenses, such expenses being unrealistically high." Jones' Surrebuttal at 5, ls. 5-6. Pine Water has sought to determine the amount of legal fees the District has incurred in connection with this matter in order to compare the District's fees for attorneys and expert witnesses

1 to that incurred by Pine Water.<sup>1</sup> Clearly, Pine Water is entitled to defend the District's  
2 claims that the Company's rate case expense is unreasonable by comparison to the  
3 expenses incurred by that opposing party in the same proceeding. It follows that the  
4 District's allegation that the Company's second set of data requests was propounded  
5 "merely to harass and intimidate the Intervenor" is frivolous. In fact, it should be noted  
6 that the Company sought only the amount of legal fees the District incurred in connection  
7 with this matter, and did not request, for example, copies of invoices which would have  
8 provided specific information regarding the District's activities in this case as well as  
9 evidence of who was paying these legal fees.

10 Second, the District's claim that the information sought is outside the test year  
11 reflects the District's lack of understanding regarding the process. Although it is true that  
12 the Commission uses a historical test year approach, rate case expense is not determined  
13 based on test year data. Rather, rate case expense is based on consideration of the  
14 amount incurred by the utility in connection with the proceeding and consideration of  
15 whether the amount incurred is reasonable. For this reason, for instance, Staff sought  
16 information regarding the amount of rate case expense the Company incurred, outside the  
17 test year, in order that it could make its own recommendation regarding the appropriate  
18 pro forma adjustment to operating expenses to include an amortized portion of rate case  
19 expense.

20 Third, the District's reliance on the fact that Pine Water Company was unable to  
21 provide authority to support its request is of no consequence. To begin with, it should not  
22 be missed that the District has failed to support its objection with any authority. More  
23 importantly, as explained above, the information sought is clearly discoverable as it is

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24 <sup>1</sup> Pine Water has previously requested information regarding Mr. Jones' fees and the  
25 District responded, without objection, by providing copies of Mr. Jones' invoices. The  
26 Company has also sought to determine the amount of expenses incurred by the District to  
retain its surrebuttal witness, Mike Ploughe.

1 calculated to lead to the discovery of admissible evidence regarding an issue the District  
2 has placed in dispute. Pine Water is unaware of any such authority but believes this  
3 matter can be ruled on in its favor without reference to any legal authority.

4 In summary, the District has challenged the Company's recovery of rate case  
5 expense in this proceeding. The information sought in the Company's second set of data  
6 requests is clearly intended to defend the District's claims. Moreover, the request is  
7 narrowly tailored and seeks only the minimum information required by Pine Water to  
8 defend the District's opposition to the requested level of rate case expense. Therefore,  
9 the District's objection should be overruled.

10 RESPECTFULLY SUBMITTED this 23<sup>rd</sup> day of January, 2004.

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17 Original and 13 copies were filed  
18 this 23rd day of January, 2004, to:

19 Docket Control  
20 Arizona Corporation Commission  
1200 West Washington  
Phoenix, Arizona 85007

21 A copy of the foregoing  
22 was hand-delivered this  
23rd day of January, 2004, to:

23 Dwight D. Nodes, Assistant Chief ALJ  
24 Hearing Division  
25 Arizona Corporation Commission  
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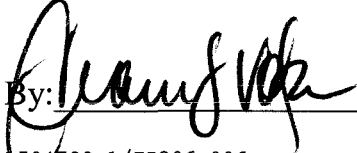
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